

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSE NIEVES,	§	
	§	No. 724, 2010
Plaintiff Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware, in and for
v.	§	New Castle County
	§	
ALL STAR TITLE, INC.,	§	C.A. No. 10C-03-191
	§	
Defendant Below,	§	
Appellee.	§	

Submitted: May 18, 2011

Decided: June 14, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices.

ORDER

This 14th day of June 2011, upon consideration of the briefs of the parties and their contentions at oral argument, it appears to the Court that:

1. Jose Nieves (“Nieves”), the plaintiff-below appellant, appeals from Superior Court orders (a) dismissing his complaint alleging consumer fraud, deceptive trade practices, breach of contract, and negligence against the defendant-below appellee, All Star Title, Inc. (“All Star”), and (b) denying his motion for reargument. The bases for dismissal and denial for reargument are set forth in the

Superior Court’s opinions issued on July 27, 2010 (the “Merits Opinion”)¹ and October 22, 2010 (the “Reargument Opinion”).²

2. In its Merits Opinion, the Superior Court determined that Nieves had failed to state a claim upon which relief could be granted, for two independent reasons. First, Nieves’ complaint was, at bottom, an “impermissible attempt[] to craft a private cause of action for the unauthorized practice of law,”³ a subject that this Court has exclusive jurisdiction to regulate.⁴ Alternatively, even if this Court’s exclusive jurisdiction over that subject area did not bar Nieves’ claim, his complaint was wholly defective on its face, because: (a) All Star’s allegedly fraudulent conduct did not occur in Delaware, thereby making the Delaware Consumer Fraud Act⁵ inapplicable; (b) as a consumer Nieves lacked standing to bring a deceptive trade practices⁶ claim; and (c) the pled facts failed to establish

¹ *Nieves v. All Star Title, Inc.*, 2010 WL 2977966 (Del. Super. Ct. July 27, 2010) (“*Merits Opinion*”).

² *Nieves v. All Star Title, Inc.*, 2010 WL 4227057 (Del. Super. Ct. Oct. 22, 2010) (“*Reargument Opinion*”).

³ *Merits Opinion*, 2010 WL 2977966, at *2.

⁴ *Id.* at *3.

⁵ 6 Del. C. § 2513.

⁶ 6 Del. C. § 2532.

that All Star had any legally-recognized duty or that All Star's conduct had caused Nieves cognizable damages.⁷

3. Nieves then moved for reargument, urging that the trial court had "misunderstood" the underlying facts, thereby rendering a decision based on inapplicable law. In its Reargument Opinion, the Superior Court concluded that: (a) Nieves' exhibit to his initial pleadings contained information which negated an element of his consumer fraud claim; (b) in his response to All Star's motion to dismiss, Nieves argued only that he was "seeking recovery of excessive fees charged by [All Star]," which the court in its Merits Opinion had determined to be unrecoverable; and (c) Nieves' new factual claims regarding the damages he suffered were not alleged in or supported by his initial pleadings.⁸ Therefore, the court denied Nieves' reargument motion on the basis that Nieves had improperly raised new facts and new arguments that were never pled or fairly presented to the court.⁹ Nieves appeals from those rulings.

4. We conclude that the judgment of the Superior Court should be affirmed on the basis of its well-reasoned and written Merits and Reargument Opinions. In so doing, we do not reach or address the issue of whether a private cause of action predicated on a finding that there has been an unauthorized practice

⁷ *Merits Opinion*, 2010 WL 2977966, at *4-6.

⁸ *Reargument Opinion*, 2010 WL 4227057, at *3-5.

⁹ *Id.* at *3.

of law is cognizable under Delaware law. We affirm solely on the alternative grounds articulated by the Superior Court in its two opinions. As explained in the Superior Court's Reargument Opinion, the factual allegations and claims presented in Nieves' reargument motion (and on this appeal) were neither fairly pled in his complaint nor fairly presented to the trial court in his response to All Star's motion to dismiss. The dismissal of Nieves' complaint and the denial of his reargument motion were therefore appropriate.

NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court are **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs
Justice